

(3)
No. 91-655

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In The
Supreme Court of the United States

October Term, 1991

THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

- vs -

DONALD WATKINS,
CHRISTIAN PHILLIPS,
MICHAEL HUNTER,

Respondents.

RESPONDENT WATKINS' BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN

NORMAN R. ROBINER

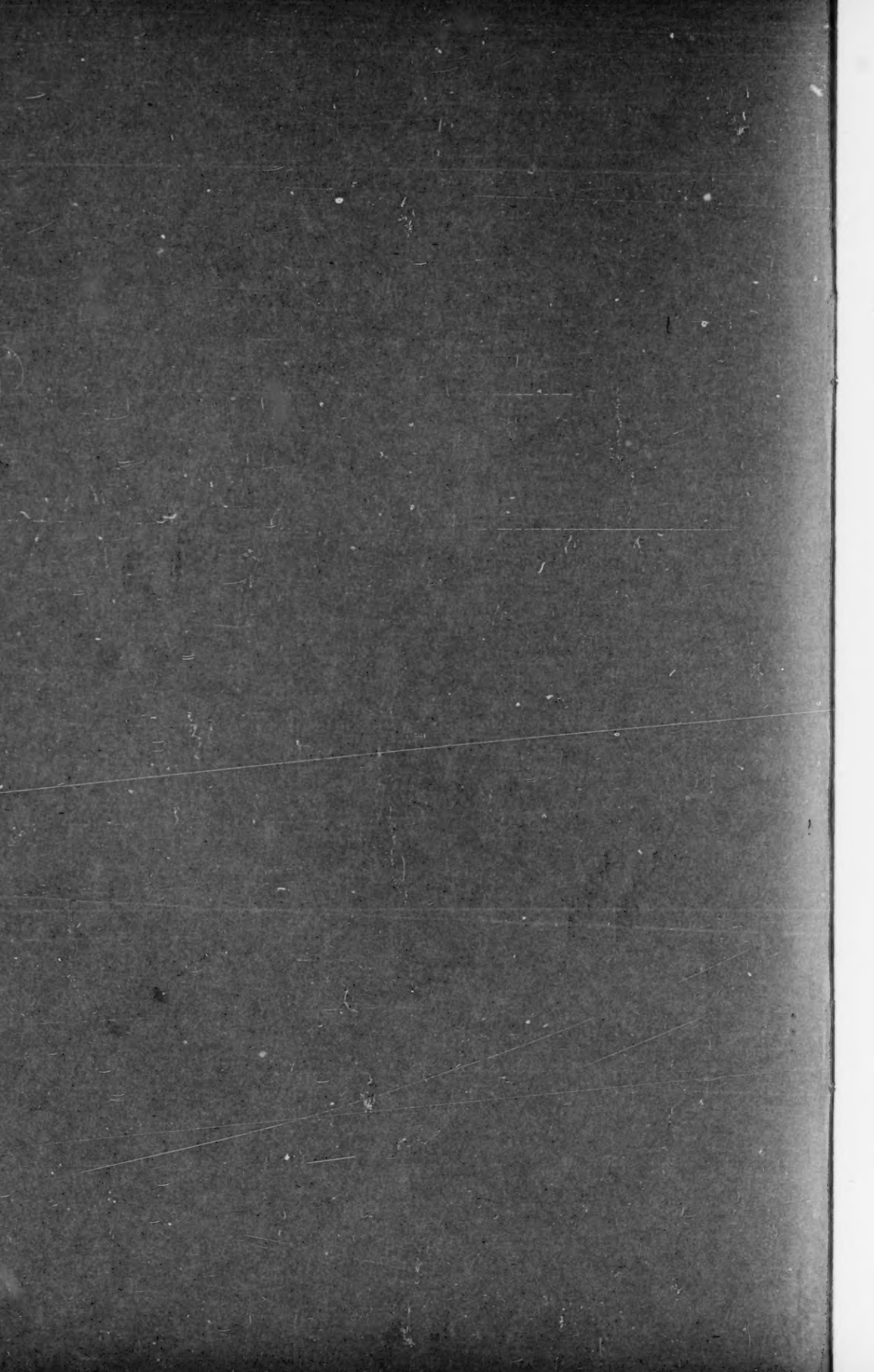
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COUNTER-STATEMENT OF QUESTION PRESENTED

SHOULD THE U.S. SUPREME COURT GRANT PETITIONER'S WRIT OF CERTIORARI WHEN THE MATTER IN QUESTION WAS DECIDED CLEARLY UNDER MICHIGAN RULE OF EVIDENCE AND MICHIGAN CONSTITUTION AND WAS NOT IN CONFLICT WITH *LEE v. ILLINOIS*, *IDAHO v. WRIGHT*, *CRUZ v. NEW YORK* AND *RICHARDSON v. MARSH* AS RELATED TO THE USE OF UN-REDACTED STATEMENTS AND RIGHT OF CONFRONTATION?

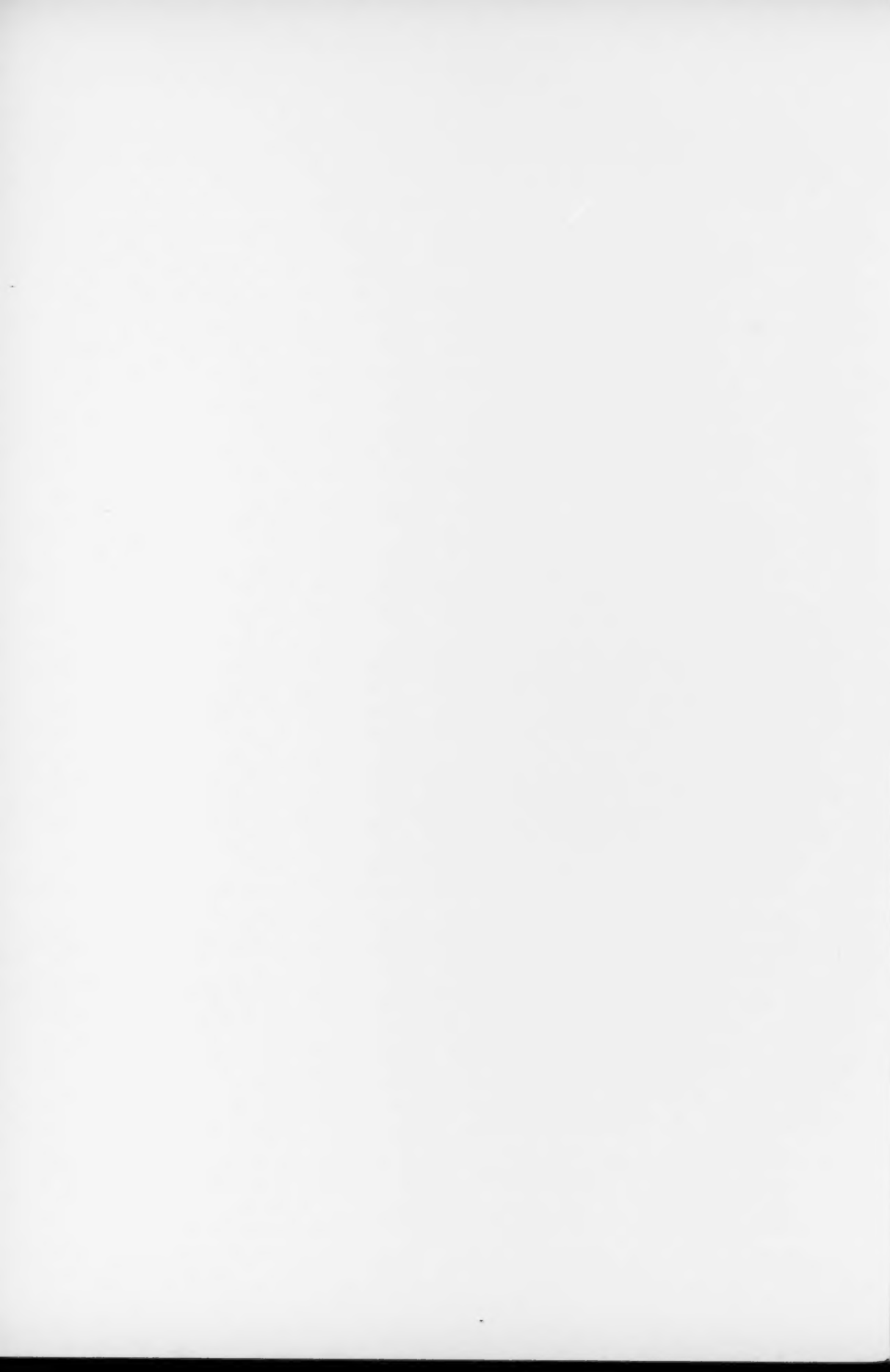


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Cases:

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Statutory and Constitutional Authority:

U.S. Constitution, Am. VI	3, 4
Michigan Constitution 1963, art. 1, § 6	3, 4

Other Authority:

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NOW COMES Respondent herein, DONALD WATKINS, by his attorney, NORMAN R. ROBINER, and prays that the Petition for a Writ of Certiorari to the Supreme Court of Michigan filed by the People of the State of Michigan be denied for the reasons herein stated:

OPINIONS BELOW

The opinion of the Michigan Court of Appeals is reported at 178 Mich App 439; 442 NW 2d 201 (1989) and is appended as Appendix A to Petition for a Writ of Certiorari. The opinion of the Michigan Supreme Court is unreported at this time and is appended as Appendix B to the People's Petition for a Writ of Certiorari.

STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered July 17, 1989. The judgment of the Michigan Supreme Court was entered September 19, 1991. The jurisdiction of this Court is invoked under 28 USC § 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . ."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Michigan Supreme Court determined the issues to be reviewed were whether under the Michigan and Federal constitution, Defendants were denied the right of confrontation and whether the unredacted statements were exceptions to MRE 804(B)(3) as "Statement Against Interest."

The majority held, "Although we generally adopt the statement of facts in the dissent, . . . , we find it necessary to revisit the crucial, disputed codefendant confes-

sions by Kerry Jordan and Walter Miller. The complete text of those statements is set forth in appendices to the dissent. Even a casual reading of the confessions leads to the unavoidable conclusion that they contain precisely the kind of inherently suspect and unreliable accusatory hearsay which has historically concerned courts and commentators. Codefendant Jordan said it all when he responded to the interrogator's question, 'Why are you telling me [this statement]', by saying: '*Because I'm not going to take the fall alone.*'" (Emphasis in the original).

At trial at Recorder's Court, City of Detroit, County of Wayne, State of Michigan, five defendants were tried jointly: Jordan, Miller, Hunter and Defendant Watkins. In the course of the trial, the court allowed the unredacted statement of Jordan and Miller to be read as substantial evidence against all defendants, over objection of defense counsels. All defendants elected not to testify at trial. All defendants were found guilty and all appealed those convictions.

The Michigan Court of Appeals upheld the lower court's finding. See Appendix to Petition for Writ of Certiorari in a published opinion.

The Michigan Supreme Court granted leave to appeal and overruled the decision of the appeals court, finding that the statements were contrary to MRE 804(B)(3) and violated defendant's right under 1963 Mich. Constitution art. 1, § 20 and U.S. Constitution, 6th Amendment.

REASONS WHY THE CAUSE SHOULD NOT BE REVIEWED BY THIS COURT

The Michigan Supreme Court reviewed the issues raised in this appeal and reached a finding which was

consistent with the applicable decision of this Court and with the precedent followed by the Michigan Supreme Court. This Court should decline to hear the matter under S. Ct. Rule 16.01.

Both the 1963 Michigan Constitution, art. 1, § 6 and the Sixth Amendment to the United States Constitution require: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . ." In a substantial number of cases, beginning with *Douglas v. Alabama*, 380 U.S. 415 (1965), *Pointer v. Texas*, 380 U.S. 400 (1965), and *Bruton v. United States*, 391 U.S. 123 (1968), the Court has upheld the essential right of the defendants to confront and cross-examine their accusers. The Court has dealt with unredacted statements by accomplices as in *Bruton*, where the Court's position was that to allow unredacted statements to be read to a jury constitutes a violation of the defendant's right of confrontation and that such statements are invariably suspect and unreliable. The Court further found that, without the right of cross-examination, such evidence was intolerable and constitutes a reversible error.

The Michigan Supreme Court in its opinion referred to *Lee v. Illinois*, 476 U.S. 530 (1986) to help in its determination whether there was sufficient indicia of reliability that would overcome the presumption against admission of the unredacted statements. The Michigan Supreme Court, applying the test as set forth in *Lee*, was not convinced that they were statements against interest as would be applicable to parties other than those making the statements. In *Cruz v. New York*, 481 U.S. 186 (1987) and its companion, *Richardson v. Marsh*, 481 U.S. 200 (1987), the Court held that a non-testifying codefendant's confession incriminating defendants is not directly admissible against the defendants. In *Lee*

the Court went further, stating that a confession cannot be admitted at joint trials of the defendants, even if the jury is instructed not to consider it against the defendant and even if the defendant's own confession is admitted against him. In *People v. Watkins*, the Michigan Supreme Court found that the statements lacked the indicia of reliability and the court said, "Even a casual reading of the confession leads to the unavoidable conclusion that it can contain precisely the kind of inherently suspect and unreliable accusatory hearsay which has historically concerned courts and commentators" and therefore do not fall within the statement against penal interest exception to the hearsay rule, MRE 804(B)(3). In *People v. Watkins*, 178 Mich App 439 (1989), the court, however, held that those statements made by defendants Jordan and Miller could be used against themselves, but certainly not against any other defendants.

As stated above, the Court further considered *Idaho v. Wright*, 407 U.S. — (1990) and found that the confessions lacked "indicia of reliability by virtue of its inherent trustworthiness, not by reference to other evidence at trial." The Michigan Supreme Court decision as relates to respondent Watkins was properly decided and was consistent with precedent as set forth in the cases argued before this Court. Therefore, this matter does not present an important question of Federal Law which requires the matter to be settled by the U.S. Supreme Court. Respondent Watkins would respectfully pray that the Petition for Writ of Certiorari be denied.

CONCLUSION

It is respectfully submitted that, for the reasons outlined above, plenary review should not be granted in this case and the Petition for Writ of Certiorari to the

Supreme Court of the State of Michigan, as filed, should not be granted.

Respectfully submitted,

By: /s/ NORMAN R. ROBINER

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Dated: November 14, 1991

